

# Advisory Opinion

IECDB AO 2010-03

Subject: National Organization for Marriage, Inc./Independent Expenditures

April 29, 2010

Zachary S. Kester  
Bopp, Coleson & Bostrom  
The National Building  
1 South Sixth Street  
Terre Haute, Indiana 47807-3510

Dear Mr. Kester:

This opinion is in response to your letter of February 26, 2010, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

## FACTUAL STATEMENT:

You advise us that your law firm represents National Organization for Marriage, Inc. (NOM), a non-profit corporation that is organized for the major purpose of engaging in issue advocacy and lobbying activities in the United States. NOM is interested in making independent expenditures in Iowa expressly advocating the election or defeat of state candidates.

## QUESTIONS:

In your opinion request you cite a number of Iowa laws, regulations, and federal court cases and ask a series of questions based on the same. We will address your questions individually below.

## OPINION:

We first note that in response to the Citizens United v. Federal Election Commission decision that permitted, in part, corporations to engage in express advocacy independent expenditures, Iowa's General Assembly enacted 2010 Iowa Acts, Senate File 2354 that amended Iowa Code section 68A.404 regulating independent

expenditures and Iowa Code section 68A.503 regulating corporate contributions. The legislation is effective April 8, 2010. The legislation directs the Board to adopt rules to implement the various provisions of the bill and the Board is in the process of doing so.

We will restate your questions in **bold type** with the responses to each in regular type immediately following. For ease of response, please consider any references below to Iowa Code sections 68A.404 and 68A.503 as meaning Iowa Code sections 68A.404 and 68A.503 as amended by 2010 Iowa Acts Senate File 2354, sections 3 and 5, effective as of April 8, 2010.

**Does Iowa ban corporate independent expenditures? If not, is a corporation required to be certified as a political corporation prior to making independent expenditures?**

Iowa Code sections 68A.404 and 68A.503 permit corporations to make independent expenditures so long as the disclosure provisions of Iowa Code section 68A.404 are followed. Board rule 351—4.50 permitting certain corporations to engage in independent expenditures was adopted as a result of a prior United States Supreme Court decision. Based on the Citizens United decision, the administrative rule is moot and corporations are no longer required to apply for status as “political corporations” prior to engaging in independent expenditures. The Board is in the process of amending the rule to remove this requirement.

**If a corporation makes independent expenditures, is the corporation required to register and report as a committee?**

Iowa Code section 68A.404 requires the reporting of independent expenditures and also requires an entity making independent expenditures to file campaign disclosure reports. The Board is in the process of simplifying this process so that an organization could disclose all required information on the independent expenditure form itself. Under the statute the only donors required to be disclosed would be those who gave money for the purpose of furthering the independent expenditure. The statute also exempts from disclosure any dues paying members of an organization. The Board will call an organization filing an independent expenditure an “independent expenditure committee” but this type of committee will be exempt from a number of the disclosure requirements required of other committees. The Board is in the process of adopting the rules that will clarify these requirements and exceptions.

**May a corporation contribute to a committee whose activities are limited to independent expenditures?**

Yes. As a corporation can now make an unlimited independent expenditure, it would be permitted to contribute without limitation to an “independent expenditure committee” subject to any reporting requirements under Iowa Code section 68A.404.

**Are expenditures without consultation with or at the suggestion by a candidate that do not expressly advocate the election or defeat of a clearly identified candidate reportable as independent expenditures?**

No. Only “express advocacy” communications as defined by Iowa Code section 68A.102(14) and Board rule 351—4.53 subject to independent expenditure reporting. Iowa is considered to be a “magic words” state for purposes of differentiating between “express advocacy” and “issue advocacy.”<sup>1</sup> Iowa also does not prohibit the “coordination” of “issue advocacy” communications between a candidate and another entity.

**Must an entity that makes expenditures or receives contributions for the purpose of influencing an election, and becoming subject to registration and reporting as a committee, have the “major purpose” to nominate or elect candidate for public office in Iowa?**

An entity that exceeds \$750 in Iowa by “expressly advocating” the “nomination, election, or defeat of a clearly identified candidate for public office or the passage or defeat of a clearly identified ballot issue” is subject to Iowa’s disclosure requirements. We would need more specific information concerning what activity the entity was to engage in prior to being able to give specific advice on the level of registration and disclosure. For example, a permanent organization that was not otherwise a prohibited contributor making a one-time contribution to an Iowa committee files Form DR-OTC as opposed to registering and reporting as a PAC. Similarly, an “independent expenditure committee” will not be subject to the same registration and reporting requirements as a PAC.

**BY DIRECTION AND VOTE OF THE BOARD**

James Albert, Board Chair  
Gerald Sullivan  
Betsy Roe  
John Walsh  
Patricia Harper  
Saima Zafar

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup> Words and symbols that exhort someone to vote for or against a clearly identified candidate or ballot issue such as “elect”, “vote for”, “defeat”, or “vote against”.